

PERSHING TAN QUETO, PETITIONER, VS. COURT OF APPEALS, JUAN POMBUENA AND RESTITUTA TAKALINAR GUANGCO DE POMBUENA, RESPONDENTS.

G.R. No. L-35648. May 16, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Before Us is a petition to review the decision of the defunct Court of Appeals (now Intermediate Appellate Court) in CA-G.R. No. 39492-R entitled, Restituta T. Guangco, Plaintiff-Appellant, versus Juan Pombuena, Defendant-Appellee, and Pershing Tan Queto, Defendant-Appellant. The decision was penned by Justice Ramon C. Fernandez who was joined by Justices Cecilia Muñoz Palma and Hermogenes Concepcion, Jr. It should be noted that all of the aforementioned justices later joined this Court. Justice Concepcion is still with the Court and is obviously not taking part in this decision.

The appealed decision is not long and having been written by a jurist with impressive credentials it readily provides both the factual background and the issues involved. For this reason the full text of the decision is reproduced as follows:

"This action for reconveyance of title, annulment of barter and recovery of property and damages was instituted by Restituta T. Guangco against Juan Pombuena and Pershing Tan Queto on October 9, 1964 in the Court of First Instance of Misamis Occidental.

The petition states that the plaintiff is one of the legitimate children of the late Benito Guangco and Basilides Takalinar, both having died intestate; that Benito Guangco and Basilides Takalinar were the owner in fee simple of that parcel of urban land situated at Centro, Ozamiz City, Philippines, known as Lot No. 304, containing an area of 702 square meters, more or less; that in their lifetime until their respective deaths, Benito Guangco and Basilides Takalinar lived with their daughter, the plaintiff, then married to the defendant, Juan Pombuena, in the house built on the southern part of said lot; that it was the plaintiff who took good care of her parents, Benito Guangco and Basilides Takalinar, until their respective deaths; that Benito Guangco died ahead of his wife, Basilides Takalinar; that sometime before her death, Basilides Takalinar, wished and instructed that after her death, one-half (1/2) portion of the aforementioned lot be given to Buenaventura Guangco, and the other one-half (1/2) be given to the daughter, the plaintiff; that the other sisters and brothers agreed and respected this wish, instruction and adjudication, so that since February 11, 1927, when the instruction was given, the plaintiff possessed and owned said property as a realty orally bequeathed to her by her mother and it thus became her only paraphernal property; that in order to strengthen her ownership together with her husband, the defendant, Juan Pombuena, a deed of sale was executed with the consideration P50.00 that was never paid for it was only a simulated price, in favor of the plaintiff and said defendant; that after the subdivision of the said lot, the southern portion belonging to the plaintiff was designated Lot No. 304-B; that Lot No. 304-B was designated as Cad. Lot No. 5944, Misamis Cadastre; that through fraud, error and/or mistake, defendant, Juan Pombuena, obtained for said Cad. Lot No. 5944 O.C.T. No. 0-1160 in his name on April 23, 1962 from the Registry of Property of Ozamis City, to the damage and prejudice of the true owner,

the plaintiff who knew of the title only very recently; that the title being now indefeasible, this action for reconveyance was filed; that the plaintiff, as owner leased portion of Lot 304-B to the defendant, Pershing Tan Queto on September 22, 1949; that during the existence of the lease contract the defendant-lessee, Pershing Tan Queto, had shown unusual interest in the property by sending different persons persuading the plaintiff to sell or barter the property to him but the plaintiff flatly told the said defendant and his emissaries that she was not selling or bartering the property because it is her only paraphernal property which she inherited from her deceased parents and she wants to preserve the integrity of the property in order to cherish and keep the memories of her late parents; that persuasion having failed, the defendant Tan Queto employed the more clever and subtle strategy by allowing the defendant Juan Pombuena and some of plaintiff's children to obtain credit in his store; that defendant Tan Queto also loaned money to Pombuena and plaintiff's children, entrapping defendant, Juan Pombuena in many debts which grew to an amount which was quite difficult for the plaintiff and her husband, Juan Pombuena, to pay, so that at the time the lease contract expired, the defendant Pershing Tan Queto refused to surrender and return the property to the plaintiff; that in order to recover possession of said property, the plaintiff filed an unlawful detainer case in the Municipal Court of Ozamis City, which was decided against defendant Pershing Tan Queto; that meanwhile defendant Pershing Tan Queto continued to cajole the plaintiff into selling or bartering the said property to him and the plaintiff stood firmly on her conviction never to sell or barter Lot 304-B; that in spite of the firm refusal of the plaintiff not to sell the property, without her knowledge and consent, through deceit and misrepresentation, the defendant Pershing Tan Queto, finally succeeded in unduly influencing the defendant, Juan Pombuena, into signing a barter contract on October 10, 1962; that after she knew of the barter contract, the plaintiff immediately protested against this deceitful act and one of her children, Napoleon Pombuena, wrote an angry letter to defendant Pershing Tan Queto vehemently protesting against the barter contract and said Napoleon Pombuena and his brother, Dr. Solomon Pombuena, wrote the Register of Deeds of Ozamiz City not to register said barter contract; that in spite of the vehement protest of plaintiff and her children against the said barter contract, the defendant Pershing Tan Queto started and persisted in the construction of the present concrete building, a portion of which is now illegally standing on the whole of Lot 304-B; that since she had knowledge of the barter contract, the plaintiff suffered actual and moral damages; that since October 10, 1962 when defendant Pershing Tan Queto took possession of Lot 304-B, the plaintiff failed to collect the monthly rental at the rate of P250.00 per month or a total of P6,000.00 for the period of 24 months up to and including October 10, 1964; that from the time of the filing of this case until its final termination, the plaintiff is entitled to a monthly rental of P250.00 or when defendant Pershing Tan Queto shall have made business with the portion of the building on Lot 304-B, the rental shall be at P900.00 per month; and that because of the refusal of defendant Pershing Tan Queto to annul the barter contract and return the possession of the property to plaintiff, the latter had to engage counsel whom she agreed to pay P2,000.00 attorney's fees.

In their answer filed on October 24, 1964 the defendants admit paragraphs I and VIII of the petition and deny the rest of the material allegations therein. As affirmative defenses, they aver that on February 11, 1927 defendant Juan Pombuena and the plaintiff acquired by purchase the land now designated as Lot 304-B, from plaintiff's mother Basilides Takalinar for the purchase price of P50.00; that the plaintiff and her defendant-husband had entered upon the actual occupation and enjoyment of the land as their conjugal property since then up to October 2, 1952 when the husband conveyed it by barter to defendant Pershing Tan Queto; that the primitive owner of the land, together with the other half portion now known as Lot 304-A, was Benito Guangco; that in the hearing before the Cadastral Court plaintiff never asserted or claimed the land in question as her paraphernal property, so said court adjudicated on November 22, 1938 this portion of Lot 304 as conjugal property of the plaintiff and defendant, Juan Pombuena resulting in the issuance of O.C.T. No. 0-1160; that plaintiff somehow managed this property because defendant Juan Pombuena, her husband, had been enmeshed in earning livelihood for himself, his wife and growing family, working almost overtime even at night as a sawmill employee; that consequently, the wife sort of administered the land in question, their only conjugal property; that on September 22, 1949, the plaintiff negotiated with defendant Pershing Tan Queto the lease over this land, but in the consummation of the lease defendant, Juan Pombuena, as husband of plaintiff,

affixed his signature to the contract of lease thereby giving his consent to the transaction; that in fact, in Civil Case No. 448 of the City Court of Ozamiz City for illegal detainer and damages against defendant Pershing Tan Queto filed by plaintiff and her husband, paragraph III of their complaint averred that the spouses 'executed the contract of lease in favor of the defendant'; that neither in the complaint nor in the contract of lease was it therein expressly adverted that plaintiff Restituta Takalinar was exclusive owner of the land as her paraphernal property; that defendant Pershing Tan Queto and his co-defendant Juan Pombuena, after the illegal detainer case was decided by the City Court of Ozamiz, both appealed to the Court of First Instance of Misamis Occidental; that meanwhile an agreement of barter was reached by both defendants hereto whereby the land in question would be exchanged for a land with an already standing house thereon which the plaintiff and her husband and children are, and have long been, occupying and in addition thereto the plaintiff and her defendant-husband were given P4,000.00 and the indebtedness adjudged against them by the City Court of Ozamiz was condoned; that the plaintiff and her defendant-husband, as well as their children, knew and impliedly assented to this transaction of barter because they are still making use of the house and land bartered to them as absolute owners and possessors; that the two sons, Dominador and Napoleon, both surnamed Pombuena, through their mother, the plaintiff, have each made use of the P4,000.00; that defendant Pershing Tan Queto before entering into the barter transaction diligently inquired and found that the land was adjudicated to plaintiff and defendant Juan Pombuena as their conjugal property having alleged and proved in the cadastral hearing that they acquired it on February 11, 1927 from Basilides Takalinar resulting in the issuance of the torrens title in question; that both being advised that the husband could dispose without the consent of the wife property acquired as conjugal property before the effectivity of the new civil code, the defendants went ahead with the barter; that had defendant Pershing Tan Queto agreed to spend for the remodelling of the house bartered to the Pombuena family at an enormous cost, this case would not have arisen; that plaintiff, her husband, children and grandchildren have not been paying rental any more on the house and lot to them bartered by defendant Pershing Tan Queto since April 1962, which was at the rate of P50.00 monthly; that the petition states no cause of action; that the instant action primarily involves the husband and wife but there is no allegation in the petition that earnest efforts toward a compromise have been made; that the property being conjugal, no reconveyance is feasible; and that annulment of barter will not lie in this case because no ground for either rescission or voidance of the contract appears indubitable.

The defendant Pershing Tan Queto asks for moral damages and attorney's fees.

The plaintiff seasonably filed an answer to the counterclaim.

The trial court rendered a decision dated January 12, 1967 the dispositive part of which reads:

'WHEREFORE, judgment is hereby rendered:

- Annuling the barter agreement dated October 10, 1962, Exhibit "J";
- Ordering the mutual restitution of properties stated in the barter by reason of said annulment;
- Ordering the Register of Deeds of Ozamiz City to cancel Original Certificate of Title No. 0-1160 and to issue in lieu thereof a transfer certificate of title in the name of Restituta Takalinar Guangco, of legal age, Filipino, married to Juan Pombuena, and residing at Ozamiz City, as her paraphernal property; and
- Ordering the defendants to pay the costs.

SO ORDERED.

City of Ozamiz, January 12, 1967.

(Sgd.) GERONIMO R. MARAVE

Judge'

(Record on Appeal, pp. 40-41)

The plaintiff and defendant, Pershing Tan Queto, appealed to this Court.

The plaintiff assigns the following error:

I

THAT THE TRIAL COURT ERRED IN NOT DECLARING THAT PORTION OF THE BUILDING ON THE LAND IN QUESTION BUILT IN BAD FAITH.

II

THAT THE TRIAL COURT ERRED IN NOT ORDERING THE DEFENDANT-APPELLANT PAY THE RENTALS IN ARREARS.

III

THAT THE TRIAL COURT ERRED IN NOT ORDERING THE DEFENDANT-APPELLANT PAY DAMAGES.

IV

THAT THE TRIAL COURT ERRED IN NOT ORDERING THE DEFENDANT-APPELLANT PAY THE ATTORNEY'S FEES.'

(Brief of plaintiff-appellant, pp. 1-2)

The defendant, Pershing Tan Queto, contends that the trial court erred in the following manner:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE CONTRACT OF SALE, EXHIBIT "B", IS TRULY A SALE, NOT JUST MERE CONVEYANCE.

II

THE TRIAL COURT ERRED IN FINDING THAT THE LAND SUBJECT MATTER OF THE PRESENT ACTION IS A PARAPHERNAL PROPERTY OF THE PLAINTIFF-APPELLANT, AND NOT A CONJUGAL PROPERTY OF THE APPELLEE AND SAID APPELLANT.

III

THE TRIAL COURT ERRED IN NOT GIVING FULL FORCE, EFFECT AND VIRTUE TO THE BARTER AGREEMENT, EXHIBIT "G".

IV

THE TRIAL COURT ERRED IN NOT DISMISSING THE COMPLAINT WITH COSTS AGAINST PLAINTIFF-APPELLANT: IN NOT GRANTING TO DEFENDANT-APPELLANT THE REMEDY OR RELIEF HE HAS PRAYED IN HIS COUNTERCLAIM.

(Brief of defendant-appellant, pp. 1-2)

We shall first take up the appeal of the defendant, Pershing Tan Queto.

By whatever name Exh. "B" is called, under the circumstances surrounding its execution and viewed in the light of Exh. "C-1", the real intention of Basilides Takalinar was to convey the land in question to her daughter,

Restituta Takalinar, as the share of the latter in the future hereditary estate of the former.

The trial court, therefore, did not commit the first error assigned by appellant Tan Queto.

That the land in question is a paraphernal property of plaintiff-appellant was admitted by defendant, Juan Pombuena, and appellant, Tan Queto in the illegal detainer action, Civil Case No. 448 of the City Court of Ozamiz.

Thus paragraph II of the complaint in said illegal detainer case reads:

'That plaintiff Restituta Guangco de Pombuena is an owner of a certain portion of residential land and improvements existing thereon, situated in the City of Ozamiz, Philippines, bounded and more particularly described as follows:

Bounded on the North -- by remaining portion of Lot 304 now the share of Buenaventura Guangco and measures 66 ft.; East - by Heirs of Pangilinan and Rosa Vayson and measures 55 ft.; South - by Heirs of Ramon Bernad and measures 66 ft.; West - by Rizal street and measures 55 ft.; containing an approximate area of 3,630 sq. ft.; a portion only of the bigger lot designated as Lot No. 304 of the City of Ozamiz Cadastre and covered by Tax Dec. No. 32756 in the name of Benito Guangco, deceased father of the plaintiff Restituta Guangco de Pombuena.'

(Complaint, Exh. "D")

The complaint was verified as true of their own knowledge by Restituta Guangco, plaintiff-appellant, and her husband, defendant, Juan Pombuena.

In his answer to the complaint in the illegal detainer case, defendant-appellant, Pershing Tan Queto alleged:

'1. That he ADMITS the averments in Paragraphs I, II, III and IV of the complaint.'

(Exh. E-1)

We, therefore, concur in the finding of the trial court that the land in question is a paraphernal property of plaintiff-appellant.

In view of the admission by both Juan Pombuena and Pershing Tan Queto that the land in question is the paraphernal property of the plaintiff-appellant, it follows that the barter agreement, Exh. "G", has no effect.

As a consequence, the trial court did not err in not dismissing the complaint and not granting the relief prayed by defendant-appellant in his counter-claim.

We now come to the appeal of the plaintiff-appellant.

The first error assigned is meritorious.

We concur in the finding, being supported by overwhelming evidence, of the trial court that Tan Queto had more than sufficient knowledge that the land in question was the paraphernal property of Restituta before the barter agreement between him and Juan Pombuena. Tan Queto, therefore, was aware that Juan Pombuena, the person he was dealing with, was not the owner of the land in question. The conclusion is inescapable that the defendant-appellant, Pershing Tan Queto, was a builder in bad faith. Hence he has no right to be refunded the value of whatever he constructed on the land in question. (Arts. 449 and 546, Civil Code of the Philippines)

The equity and circumstances of the case do not warrant that the defendant-appellant be ordered to pay the plaintiff-appellant rentals. Moreover, it appears that the plaintiff-appellant and her family have been living on the house and land of Tan Queto without paying any rent.

By the same token, the defendant-appellant should not be made to pay damages and attorney's fees.

WHEREFORE, the decision appealed from is hereby affirmed with the sole modification that the defendant-appellant is not entitled to be refunded the value of whatever he constructed on the land in question, without pronouncement as to costs."

The core issue in the trial court, the Court of Appeals and this Court is the ownership of Lot No. 304-B (Cadastral Lot No. 5944) which is covered by O.C.T. No. 0-1160 of the Registry of Property of Ozamiz City.

Restituta T. Guangco claims that although the lot was registered in the name of her husband, Juan Pombuena, it was her paraphernal property because she acquired it through a lucrative title from her mother. Upon the other hand, Juan Pombuena and the transferee of the lot, Pershing Tan Queto, claim that it belongs to the conjugal partnership of the Pombuenas and having been acquired on February 11, 1927, long before the Civil Code of the Philippines took effect, Juan Pombuena had the capacity to alienate (barter) it even without the consent of the wife. (Art. 166, par. 2, Civil Code.)

Both the trial court and the Court of appeals found as a fact that the lot in question is the paraphernal property of Restituta T. Guangco. How the Court of Appeals reached this conclusion is well explained in its decision. The judgment of the Court of Appeals is conclusive as to the facts; it cannot be reviewed by this Court. (2 Moran, Rules of Court [1976], p. 485, citing a long list of cases.)

Since the lot in question is the paraphernal property of Restituta, the order to register it in her name as her paraphernal property is well-taken. Also well-taken is the order annulling the barter agreement and directing the mutual restitution of the objects bartered because of failure of consideration.

The other question relates to the forfeiture of the building which Tan Queto built on the land in question. The Court of Appeals found as a fact that Tan Queto was a builder in bad faith because he knew that the land was the paraphernal property of Restituta and it was not for Juan Pombuena to barter it.

The factual conclusion that Tan Queto is a builder in bad faith is well-taken. He knew that he acquired no title to lot in question because of the barter and when he built on it he did so in bad faith. As a builder in bad faith he has no right to be refunded the value of the building for Article 449 of the Civil Code stipulates:

"Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity."

The Court of Appeals committed no error of a legal nature in its decision.

WHEREFORE, the petition is dismissed for lack of merit. Cost against the petitioner.

SO ORDERED.

Makasiar, Guerrero, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., on official leave.

Teehankee (Acting C.J.), Aquino, Concepcion Jr. and De Castro, JJ., took no part.

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